

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

**FILED
CLERK**

2/14/2018 4:56 pm

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

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THOMAS GESUALDI, LOUIS BISIGNANO,
ANTHONY D'AQUILA, MICHAEL O'TOOLE,
BENEDETTO UMBRA, JOSEPH A. FERRARA, SR.,
FRANK H. FINKEL, MARC HERBST,
DENISE RICHARDSON, and THOMAS CORBETT,
as Trustees and fiduciaries of the Local
282 Welfare Trust Fund, the Local 282
Pension Trust Fund, the Local 282
Annuity Trust Fund, the Local 282 Job
Training Trust Fund, and the Local 282
Vacation and Sick Leave Trust Fund,

MEMORANDUM & ORDER
14-CV-4024 (JS) (ARL)

Plaintiffs,

-against-

LT ASSOCIATES, INC.,

Defendant.

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APPEARANCES

For Plaintiffs: Arthur J. Muller, Esq.
James R. Grisi, Esq.
Jonathan M. Bardavid, Esq.
Trivella & Forte LLP
1311 Mamaroneck Avenue
White Plains, NY 10605

For Defendant: No appearance

SEYBERT, District Judge:

Pending before the Court are: (1) Plaintiffs' motion for entry of a default judgment (Pls.' Mot., Docket Entry 14) and (2) Magistrate Judge Arlene R. Lindsay's January 11, 2018 Report and Recommendation (the "January 2018 R&R") recommending that this Court grant Plaintiffs' motion and award damages totaling

\$18,426,338.80 (Jan. 2018 R&R, Docket Entry 31). For the following reasons, Judge Lindsay's January 2018 R&R is ADOPTED AS MODIFIED.

BACKGROUND

Plaintiffs commenced this action on June 27, 2014, seeking to recover unpaid contributions and related damages from LT Associates, Inc. ("Defendant") pursuant to Sections 502 and 515 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1132(a)(3) and 1145, and Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a). (Compl., Docket Entry 1, ¶¶ 78-86.) Defendant did not answer or otherwise respond to the Complaint.

On December 1, 2014, Plaintiffs filed a request for a certificate of default with the Clerk of the Court, who issued the certificate on December 2, 2014. (Req. for Cert. of Def., Docket Entry 8; Cert. of Def., Docket Entry 9.) On November 20, 2015, Plaintiffs filed this motion for entry of a default judgment, and on January 16, 2016, the undersigned referred the motion to Judge Lindsay for a report and recommendation on whether the motion should be granted. (See Pls.'s Mot.; Jan. 2016 Referral Order, Docket Entry 22.) On August 10, 2016, Judge Lindsay recommended that Plaintiffs' motion be denied with leave to renew, and the undersigned adopted Judge Lindsay's recommendation in its entirety on September 21, 2016. (Aug. 2016 Elec. R&R; Sept. 2016 Order, Docket Entry 24.) On December 20, 2016, Plaintiffs renewed their

motion by submitting documentation that conformed with the Court's directives. (Dec. 2016 Letter, Docket Entry 29.)

The R&R

In the January 2018 R&R, Judge Lindsay recommends that Plaintiffs' motion be granted because Defendant failed to answer or otherwise respond to the Complaint, the Complaint states valid claims, and the documentary evidence that Plaintiffs submitted provides a basis for an award of damages. (Jan. 2018 R&R at 10-12.) Accordingly, Judge Lindsay recommends that damages be awarded in the amount of \$18,426,338.80. (Jan. 2018 R&R at 1.)

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen (14) days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Based on the January 2018 R&R's damages summary charts, Plaintiffs' damages total \$18,426,307.48. (Jan. 2018 R&R at 14-15, 17-18, 20-21.)

Upon careful review and consideration, the Court finds Judge Lindsay's R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the January 2018 R&R AS MODIFIED. Therefore, Plaintiffs are awarded \$18,426,307.48.

CONCLUSION

For the foregoing reasons, Judge Lindsay's January 2018 R&R (Docket Entry 31) is ADOPTED AS MODIFIED. Plaintiffs' motion for entry of a default judgment (Docket Entry 14) is GRANTED and Plaintiffs are awarded \$18,426,307.48. The Clerk of the Court is directed to enter judgment in favor of Plaintiffs against Defendant as follows:

Unpaid Contributions	\$12,007,360.28
Interest on Unpaid Contributions Calculated through 10/30/2015	\$2,978,167.63
Liquidated Damages on Unpaid Contributions Calculated through 10/30/2015	\$3,389,169.25
Audit Fees	\$15,909.50
Attorneys' Fees	\$34,967.00
Costs	\$733.82

<u>Total</u>	\$18,426,307.48
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Daily Interest on Unpaid Contributions from 10/31/2015 through Entry of Judgment	+ \$5,921.60/day
Continued Accrual of Liquidated Damages on Unpaid Contributions from 10/31/2015 through Entry of Judgment	+ \$3,177.49/day

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: February 14, 2018
Central Islip, New York